

**BOROUGH OF TUCKERTON LAND USE BOARD**  
**May 18, 2017**

In accordance with the provisions of the Open Public Meetings Act, Chris Bethmann, Land Use Board Chairman, opened the meeting of the Tuckerton Land Use Board on Thursday, May 18, 2017, at 7:00 p.m. in the Tuckerton Borough Hall.

**FLAG SALUTE:** Chris Bethmann led the flag salute.

**SUNSHINE STATEMENT:** Carol Scurman read the provisions of the Open Public Meetings Act.

**ROLL CALL:**

The members of the Land Use Board in attendance were, Mayor Susan Marshall, James McAndrew, Keith Vreeland, Joan Rosenberg, Calvin Morey, Tom Hennaut, Peter Gioiello, Greg Brojack, Robert Rue, and Chris Bethmann. Wayne Tonnesen arrived late.

**MINUTES:**

A motion was made by James McAndrew to approve the minutes of the April 20, 2017 meeting as written. Joan Rosenberg seconded the motion. On Roll call vote, all members voted yes. The motion was carried.

**INVOICES**

**T & M Associates totaling \$4,523.00**

3/31/17 (SCL320293)	Jon Miller Properties / B 63, L 10.104 & 19	578.00
3/31/17 (SCL320294)	Charles Messano / B65, L9.01	113.25
3/31/17 (SCL320296)	OCEAN Inc. Site Plan / B 49, L 5	2,189.50
3/31/17 (SCL320297)	H2 Investments / B 40, L 2 & 2	75.50
5/4/17 (SCL321880)	Charles Messano / B65, L9.01	472.00
5/4/17 (SCL321881)	OCEAN Inc. Site Plan / B 49, L 5	1,094.75

**Woodland, McCoy & Shinn totaling \$1,200**

5/12/17 (61839)	OCEAN Inc. Site Plan / B49, L5	1,000.00
5/12/17 (61845)	Board Representation-April	200.00

**CORRESPONDENCE:**

3/29/17 from OC Soil Conservation District regarding S. Green St. Park Renovation, Block 45, Lot 19  
4/5/17 from OC Soil Conservation District regarding Tuckerton School District – Site Plan / Block 70, Lot 1

**NEW BUSINESS - Application**

**APPEAL OF THE DECISION OF ADMINISTRATIVE OFFICER**  
**BLOCK 38, LOT 21**

Robert Shinn said Mayor Marshall and James McAndrew chose to step down for the reason of appearance; however, they can participate as public members. Richard Kitrick introduced himself as the applicant's attorney. The packet given to the Board was marked as Exhibit A, an estimate from Mr. Petrucelli was marked as Exhibit B.

Anthony Petrucelli, Hillsborough, NJ, was sworn in by Robert Shinn and testified he had 42 years of general contractor experience and worked on hundreds of construction projects. He also listed his training and education,

including licensed home improvement contractor. He was accepted as an expert in his field. Mr. Petrucelli testified he met with the applicant, Mrs. Couture to evaluate the cost of restoring her house after Superstorm Sandy. Using Exhibit B, he estimated it would cost \$16,500 to return the property exactly as it was prior to the storm.

Mrs. Couture, 404 Washington Avenue, Dumont, NJ, was sworn in by Robert Shinn, and testified she purchased the property at 806 South Green Street on February 11, 2016. She owns another house in Tuckerton; her intent for this house was for her parents since it's a small, one-story house and her parents cannot navigate stairs. When she purchased the house, she was represented satisfactorily by counsel. After being advised by the Tuckerton Construction Department there was no Letter of Substantial Damage on the house, she purchased it. She determined the cost of restoring the property if she and her husband did the work and also got an estimate from a contractor to do the work. After she purchased the house, she was told if it sustained substantial damage, it would have to be raised. She came to the conclusion the house was not substantially damaged based on how much it would cost to be repaired verses the value of the structure. The tax assessed value when she purchased the structure, according to the Tax Assessor, from 2012 to time of purchase, was \$68,500. That was the reason they purchased the house. The repairs to the house wouldn't even come close to 50% of the assessed value. After she purchased the house she went through the complete process of appealing her taxes. As a result, the Tax Assessor said the value of the structure was \$50,000. They put a new roof on the house. When she gave the information of how much it would cost to the Flood Plain Management Official, he in turn sent a letter back to her saying the cost to restore the house is more than 50% of the value of the structure, which he said was \$18,000. She then hired Kathy Principattia, a licensed NJ appraiser who placed the value of the structure, pre Sandy (the way she has done all over Ocean County), at \$82,356. She also received a subsequent appraisal from Cassidy Appraisal Service (marked Exhibit C), another licensed appraiser who put a value of the structure at the time of purchase at \$60,940.

Wayne Tonnesen asked if the house appraisal was after the new roof was put on it. She said it was. The cost of the new roof was \$3,000. Rob Rue asked if she got a Resale Certificate of Occupancy after getting the new roof. She said she did not.

Mr. Kitrick said Tuckerton's Municipal Ordinance that deals with substantial damage is 166-5. FEMA has language that requires municipalities to have ordinances in order for municipalities to participate in the National Flood Insurance Program. While the Tuckerton ordinance stands on its own, it's this Board's job to make an interpretation of the ordinance. Mr. Kitrick cited in his application the manual from FEMA which provides clear guidelines on interpreting substantial damage and substantial values on substantially improved properties. While that is not binding on this Board, it should be used as a guide as to how this Board interprets this ordinance. One of the areas of contention is the municipality is looking at the damaged property and saying if it cost more than 50% of the value of the current structure in its damaged state, it needs to be raised. According to the FEMA manual, that is not appropriate. If the homeowner was to add on to the original structure, he would agree with the official. This home has not been touched since the storm; they are restoring it to its pre-storm condition. The FEMA manual clearly states, regardless of whether the determination is made before or after the sale, it's to be based on the value prior to the date of damage. The municipality was using the value of the damaged condition. Regarding determining the value of the property, the FEMA Handbook provides different guidelines in order of preference. 1) Professional Property Appraiser, licensed by the state of NJ. – The Coutures hired two separate Professional Property Appraisers. 2) Licensed Tax Assessor – The tax assessed value of the property was \$68,500 and after the appeal,

\$50,000. 3) Licensed Insurance Adjuster – they do a cash value looking at the structure, cost of materials, cost of labor. 4) Qualified estimate by the Zoning Officer - The Borough official said, the structure was worth \$18,000 determined by a hybrid calculation based on what the property sold for. This method is only to be utilized if the afore-mentioned options are not available. In this case they were available and were provided to the municipality.

Wayne Tonnesen asked if they ever got a public adjuster and estimate on the repair value. He believes the cost of repair should also be a factor. Mr. Kitrick said they did not get an adjuster, they hired a contractor. His estimate was \$16,500. Chris Bethmann said when they apply for a building permit, they will have to specify the cost. Mr. Bethmann asked if a ramp was included in the \$16,500 price. Mr. Kitrick said he did not believe it was. Mrs. Couture said she was offered a make-shift ramp which serve her purposes. Mr. Bethmann said you are not allowed to take separate bites at repair costs. He believes the cost of the roof should also be added into the cost of repair, bringing to cost to \$19,500. He asked if there have been any updates to the FEMA handbook entered into evidence. He was told there was not. He said the handbook states change of ownership should have no bearing on substantial damage determination and value should be determined prior to the date of damage. Therefore, if \$68,500 is the amount determined by the Tax Assessor, it should be used. Mr. Kitrick said, whether the Professional Property Appraiser's value of \$82,356 or the Tax Assessor's value of \$68,000 are used, the Coutures are well within range, even with the addition of the roof and a ramp. Mr. Shinn and Mr. Mallon concurred.

Rob Rue asked if with the contractor's work that is proposed to be done is sufficient to obtain a C.O. for the property. Mr. Kitrick said he was contracted to restore the structure to the condition it was in prior to the storm, nothing more and nothing less. Mr. Bethmann said when they pull the permits, the amount to be paid will be specified.

Calvin Morey asked if they wanted to add on to the structure in the future. He was told, once the structure is restored to its pre-storm condition, they would have to apply for a building permit to make further improvements, which may then result in the need to raise the structure.

Greg Brojack asked if they hired an engineer or home inspector to look at the house. Mrs. Couture said she sent a letter to the municipality from an engineer saying the structure was structurally sound.

Jack Mallon said the regulations are clear what is and is not included in the estimate and questioned if a ramp would be included. It was agreed the cost of a ramp would not be high enough to make a difference.

Wayne Tonnesen asked the amount of flooding in the house. Mrs. Couture testified just over two feet. Mr. Tonnesen said he was concerned with the mold mediation. Mrs. Couture said they do not have a mold issue at this time.

Public Portion was opened.

Mr. McAndrew asked if this property is considered a Repetitive Loss Property. Mr. Kitrick said he did not know.

Phil Reed, Zoning Official and Flood Plain Manager for Tuckerton Borough was sworn in by Robert Shinn. Mr. Reed testified, for the purpose of making substantial improvement and substantial damage determination, local officials need to determine market value. If a building has not been maintained or has deteriorated over a period of

time, then the market value is determined as to the date of the application for the permit to improve or repair the building. IP regulations do not define market value. Generally, market value can be explained as the amount the owner would be willing, but not obliged to sell, and that a buyer would be willing, but not compelled to pay. They did use the 2012, pre-Sandy total assessment of \$176,500, as they did for all of the substantially damaged properties for two or three years after the storm. Considering the amount of time past the storm, they have not been doing much substantial damage determination. Everyone in the state recently received a letter from the state of NJ, the DEP, FEMA and US Dept. of Homeland Security dated April 5, 2017 (The letter addressed to Mayor Marshall was entered into evidence as B-1). Our local flood damage prevention ordinance contains minimum NFIP requirements that not only apply to new structures, but also to existing structures which are substantially improved or substantially damaged. If work on buildings substantiate substantial improvement or substantial damage, then structures need to be brought into compliance to the current NFIP requirements for new construction, including that the lowest floors be elevated to or above the BFE. Mostly everything coming in now is looked at from the substantially improved part of it because buildings damaged by Sandy have certainly deteriorated-they don't get better with age. The last two years, the way they have put the value on structures as market value is what the properties are selling for vs. the assessment that was done in 2012. They took the \$176,500 with the land value being 62%, \$108,000. The \$68,500 assessment also took into account other improvements, mostly the detached garage. The detached garage was valued at \$6,298 in 2012. The actual building was \$62,242, approximately 35% of the \$176,500. The property sold in 2016 for \$56,500. They calculated 35% of that was in that \$18,800 range; it actually comes up to \$19,770. That is how they determined the market value of this property. Regarding appeals, 5.6.6 of the desk reference states, "It is not appropriate for an owner to build in a manner that is contrary to the regulations and codes to seek an appeal. In those cases, the owner should seek a variance." The Coutures filed a petition to appeal to the Tax Assessor dated 3/30/16 (Exhibit B-2) stating the assessment was \$176,500 and said they thought a fair number was \$56,500. The Tax Assessor offered them the land at \$56,000, the improvement inclusive of the detached garage at 11,800. Mr. Couture asked him to raise the number to \$50,000, which he did. Therefore, Mr. Read does not feel the amount of \$50,000 is accurate.

Mr. Kitrick asked that the Board not consider the here say evidence regarding the Tax Assessor reducing the value upon request of the homeowner since he is not here to testify or be cross examined.

Mr. Bethmann said, what we have entered into evidence is the Tax Assessor currently values the structure at \$50,000; Mr. Kitrick concurred.

Mr. Reed said this affects everyone in the program; this is the way they have done this with everyone. Mr. Bethmann said there are still several houses in that vicinity that have not been raised. Mr. Reed said there are some around, but in that specific area, the house on either side of them, the houses across the street and the house behind them have been raised.

Mr. Kitrick responded to Exhibits B-1 and B-2, just entered into evidence. The letter to Mayor Marshall strengthens their argument that you need to determine whether a property is substantially improved or substantially damaged; that is not to say that since four years has lapsed, there wasn't substantial damage. The question is, are you improving that structure or restoring it to its pre-Sandy condition. With regard to the appeal to the Tax Assessor, FEMA makes it very clear, when determining value, you start with the licensed appraiser, then the Tax Assessor. The municipality has been using a hybrid formula using a calculation which includes land value, which should not

be included. You should look at the value of the structure and have some sort of a multiplier of 35%. The Code Official is not a licensed appraiser.

Mr. Shinn said the dispute is which assessed value do we use. Mr. Bethmann said, as far as he understands, the FEMA Desk Reference says determination of the value of the structure goes back to pre-Sandy; he is also hard pressed to believe the structure is worth less than they are being taxed on.

Mr. Mallon said, using the formula, whether using the value placed on the structure by either the licensed appraiser or the Tax Assessor, the cost to restore is less than 50%.

Greg Brojack said the most expensive cost of restoration is usually the pilings. If the engineer found the structure to be structurally sound, that would have been taken into consideration by the licensed assessor and Tax Assessor.

The contractor was asked if he checked to see if the structure was sound. He testified he is not qualified to do so, but relied on the engineer's report that it was. Mr. Shinn said the applicant testified there is a letter on file with the municipality from an engineer representing the structure is sound. Mr. Reed confirmed a letter was submitted to his office deeming the pilings were sufficient.

Mr. Shinn said, they are looking for an appeal from the decision of an official. After hearing testimony regarding the assessed values of the structure and the official's value of the structure, this board needs to determine which value you believe should be used as opposed to the cost of repairs.

Mr. Tonnesen asked for clarification of the part of Mr. Reed's testimony regarding an appeal is not appropriate. Mr. Kitrick said he believes that does not apply to this sort of situation; it is for insurance purposes. Mr. Shinn agreed.

Calvin Morey made a motion to uphold the applicant's appeal to overturn the official's decision after hearing the assessed value of the property before and after Sandy by both professional appraisers and the Borough official. According to both professional assessments, the cost of restoring the structure to pre-Sandy condition is less than 50% of the value.

Rob Rue seconded the motion and on roll call

Keith Vreeland voted yes

Joan Rosenberg voted yes

Calvin Morey voted yes

Tom Hennaut voted no

Peter Gioiello voted yes

Robert Rue voted yes

Greg Brojack voted yes

Wayne Tonnesen abstained (he arrived late and missed some of the testimony)

Chris Bethmann voted yes

The motion was carried.

Robert Shinn advised the Board and the Public, later in the meeting we will be going into Executive Session, which will require a motion and a Resolution approving an Executive Session.

***OLD BUSINESS - Resolution***

**O.C.E.A.N. INC / BLOCK 49, LOT 5  
MAJOR SUBDIVISION & SITE PLAN-PRELIMINARY**

A motion was made by Jim McAndrew and seconded by Keith Vreeland to approve the Resolution as written. On roll call vote, all eligible members voted yes. The motion was carried.

***INFORMAL DISCUSSION***

There being none, Informal Discussion was closed.

***PUBLIC PORTION***

Public Portion was opened. There being no comments or questions, Public Portion was closed.

***EXECUTIVE SESSION***

A Motion was made by Keith Vreeland and seconded by Greg Brojack to approve an Executive Session and resolution.

***ADJOURN***

There being no further business, a motion was made by Jim McAndrew, seconded by Joan Rosenberg and unanimously agreed to adjourn the meeting.

Respectfully submitted,

Carol Scurman  
Land Use Board Secretary